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CASE LAW ON UNCITRAL TEXTS (CLOUT)

User Guide

Contents

		Page
I.	Scope and purposes of the information system	2
II.	Collection of decisions and awards	3
III.	Structure and purpose of abstracts	5
IV.	Possible copyright restrictions and confidentiality	6
V.	Internet address	6
Annexes		
I.	Abbreviations of UNCITRAL legal texts reported in CLOUT	7
II.	Most common terminology in the CLOUT system	8
III.	Checklist for drafting CLOUT abstracts	9

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I. Scope and purposes of the information system

1. Based on a decision by the United Nations Commission on International Trade Law ("UNCITRAL") at its twenty-first session in 1988,[1] the Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that have emanated from the work of the Commission. The acronym for the system is "CLOUT" ("Case law on UNCITRAL texts").

2. The purpose of the system is to promote international awareness of such legal texts elaborated or adopted by the Commission, to enable judges, arbitrators, lawyers, parties to commercial transactions and other interested persons to take decisions and awards relating to those texts into account in dealing with matters within their responsibilities and to promote the uniform interpretation and application of those texts.

3. The system is intended to cover current and future UNCITRAL Conventions and Model Laws that have either entered into force or been implemented by the States and on which there is relevant case law. At present, the following legal texts are covered:

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention");
- Convention on the Limitation Period in the International Sale of Goods, (New York, 1974) and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods, (1980) (Limitation Convention);
- United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules");
- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980);
- UNCITRAL Model Law on International Credit Transfers (1992);
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995);
- UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006;
- UNCITRAL Model Law on Electronic Commerce (1996);
- UNCITRAL Model Law on Cross-Border Insolvency (1997);
- UNCITRAL Model Law on Electronic Signatures (2001); and
- United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005).

4. The system relies on a network of national correspondents designated by those States that are parties to a Convention or have enacted legislation based on a Model Law (hereinafter referred to as "implementing States"). There is no limit to the maximum number of national correspondents that a State can appoint. Ideally, each Convention and, or, Model Law implemented by a State should be entrusted to at least one correspondent. Following the decision of the Commission at its forty-second session, in 2009,[2] the appointment of national correspondents should be reconfirmed every five years with a view to enabling those correspondents who wish to remain actively involved to continue their work and to providing an opportunity for new

[1] See *Official Records of the General Assembly, Forty-third Session, Supplement No. 17* (A/43/17), paras. 98 to 109.

[2] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 370.

correspondents to join the network. A list of national correspondents, which is regularly updated (under the identifying symbol: A/CN.9/SER.C/Correspondents/1) will be made available to the public upon individual request.

5. The national correspondents monitor and collect court decisions and arbitral awards, and prepare abstracts of those considered relevant in one of the official languages of the United Nations (i.e. Arabic, Chinese, English, French, Russian and Spanish). The abstracts are translated by the Secretariat into the other five United Nations languages and are published in all six languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...). Documents containing collections of abstracts are published whenever a sufficient number of abstracts have been received to justify publication on the basis of their contribution to the interpretation of the UNCITRAL text. The abstracts are thus published at irregular intervals. The decisions and the awards in their original language should also be forwarded by the national correspondents to the Secretariat.

6. The Secretariat will monitor, with the assistance of the national correspondents, available case law on any Convention and Model Law that is not yet covered by the system and will include the relevant information as it becomes available. This User Guide will be revised accordingly.

7. It should be noted that, in view of the nature of the system, neither a national correspondent nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for errors or omissions that may occur in relation to any aspect of the system or its execution.

II. Collection of decisions and awards

8. The system aims at decisions and arbitral awards that are relevant to the interpretation or application of an UNCITRAL legal text. This includes those decisions and awards that interpret or apply a specific provision or provisions, as well as those that do not refer to a specific provision but relate to the legal text in general. For instance, decisions to the effect that a text is not applicable to the case at hand would be included.

9. The primary task of national correspondents is to collect decisions issued by courts of their respective implementing States. National correspondents may also collect other relevant decisions or awards, including those relating to a national law that is closely modelled on the text of a Convention elaborated by UNCITRAL even if the State is not party to the Convention.

Court decisions

10. Preferably, final decisions of courts will be collected; where a court decision that is subject to appeal or review is included in the CLOUT collection, the abstract should indicate that status. Where there is both an appellate decision and a decision by a lower court, the preparation of an abstract of the decision by the lower court will not be considered a priority. However, where the reasoning at both levels is of legal value to the interpretation of an UNCITRAL legal text, abstracts may be prepared in respect of both decisions.

Appellate status

11. When the abstract concerns an appellate decision, it should state the following: (i) whether the appeal was procedurally denied; (ii) whether it was substantively denied; (iii) whether the decision of the lower court was overruled or negated on merits; and (iv) whether the case was remanded to the lower court. Moreover, information on whether the appeal is pending should also be provided.

Lower court decisions

12. In addition to what was noted in paragraph 10 above, preparation of an abstract of a lower court decision may also be relevant when it is foreseeable that considerable time will be needed before an appellate decision is rendered.

13. If the lower court decision is not reported in CLOUT, the abstract of the appellate decision should include the main points of the lower court reasoning in respect of the interpretation of the UNCITRAL text in order to facilitate understanding of the decision of the higher court. If the decision of the lower court is already reported in CLOUT, concise reference to that decision would suffice. The abstract of the appellate decision should also include reference (even by way of a footnote) to the CLOUT case number of the lower court decision.

Arbitral awards

14. As in the case of court decisions (see para. 10 above), final awards will be mainly collected. Special consideration applies to the collection of the awards. The accessibility of arbitral awards varies considerably and is, as a rule, rather limited. Often, their availability is restricted by requirements of confidentiality. Their accessibility may also be restricted by the general usage of an arbitral institution. The availability of awards issued by tribunals in arbitration proceedings that are not administered by an arbitral institution is likely to be even more limited. Thus, arbitral awards are included in the collection only in so far as they come to the attention of national correspondents and in the form in which they are made available to them. Direct collaboration of arbitration centres in the collection of abstracts may be requested by the Secretariat. The general guidance provided in this User Guide is fully applicable to arbitration centres.[3]

Relationship to existing case law in national jurisdictions

15. Whenever possible, the abstract should indicate if the court decision, or the arbitral award, is consistent with existing case law in the domestic jurisdiction. If the court decision, or the arbitral award, is potentially inconsistent, the abstract may include reference to the relevant sections of available UNCITRAL digests (even by way of a footnote) in order to draw the attention of the CLOUT users to the approach taken on similar matters in other jurisdictions.

16. The abstract should also indicate whether the court decision, or the arbitral award, deals with questions of interpretation of UNCITRAL texts which were never determined before in the jurisdiction. Moreover, the abstract could highlight if the case that is reported refers to a dispute that is factually distinct from prior precedential cases.

Relationship to underlying UNCITRAL texts

17. In a similar way as indicated above, the abstract should highlight the relationship between the decision or the award and the underlying UNCITRAL legislative text. The abstracts can also refer to relevant sections of the UNCITRAL digests of case law, if any, in order to draw attention of the user to possible positions or trends in other jurisdictions. The abstract can also include information as to whether the court decision, or the arbitral award, deals with entirely novel questions of law for decision by the court concerned, and whether there are factual aspects of the case that might distinguish it from other decisions related to an issue.

Complete court decisions or arbitral awards

18. Generally, the complete court decision or arbitral award, in its original language, should be forwarded to the Secretariat. In exceptional cases, however, a certain

[3] A list of arbitration centres regularly cooperating with the Secretariat may be added to the list of national correspondents.

portion of a decision or arbitral award may be omitted for reasons, for example, of confidentiality (in such cases an abridged decision or arbitral award might be provided to the Secretariat) or because the portion omitted is not relevant to an UNCITRAL text, or because the portion is not available to the national correspondent.

19. The Secretariat stores the decisions and awards received from the national correspondents and from other sources and makes them available on the CLOUT database, providing that there are no copyright restrictions or any other restriction by reason of the law of the jurisdiction where the decisions and awards were rendered.

III. Structure and purpose of abstracts

20. Each abstract bears a case number, based upon the order in which the abstracts are published, irrespective of the legal text to which the decision or award relates or of the country of its origin. After the case number, the provisions of the relevant convention or model law dealt with in the decision or award are listed, using the abbreviation in the list included in annex I to this guide (e.g., "CISG 1 (1)(a), (b); 99 (6); 100 (2)").

21. Thereafter, further identification data is given, indicating the court or arbitral tribunal, the date of the decision or award, the names of the parties where these are available and any other means of identifying the decision or arbitral award using the official or customary means of expressing that data in a given jurisdiction.

22. Reference is also made to the source from which a decision or award that has been published was obtained. If the decision or award included in the collection is a copy of the original decision or award, the notation "original" will be given. If the court decision, or the arbitral award, is taken from a publication or a website (whether the website of a court, commercial chambers of commerce, ministries, universities and similar other entities), the notation is "published in: ...". After the reference to the source, the language of the decision or award is indicated.

23. Finally, additional information is given on the following points: the author of the abstract, where the author is a national correspondent of the country of origin or a voluntary contributor;[4] whether the original case is stored in any outside database; references to reproductions of the decision or arbitral award subsequent to its original issuance or publication; any translation of the decision or award into languages other than its original language; and published notes or commentaries on the decision or award. Any later publications on the decision or arbitral award are referenced in subsequent documents under the original case number. It may be noted that generally, in references to publications, abbreviations of such publications are not used.

24. The abstracts are intended to provide sufficient information to enable readers to decide whether it is worthwhile to examine the complete court decision or arbitral award that is the subject of the abstract. They are usually no longer than one page; exceptions may be made where a decision or award is particularly complex, or deals with several provisions of the relevant UNCITRAL text or represents a landmark ruling. In view of the necessity for brevity, the substantive part of the abstract is ordinarily not a complete summary of the full court decision or arbitral award, but should suffice as a "pointer" to the specific issues concerning the application and interpretation of the relevant UNCITRAL text in a given decision or award.

25. Guided by that purpose, the following points are usually included in an abstract: the reasons for applying or interpreting the provision of the UNCITRAL text in the way that it is interpreted, including any specific reliance on a principle or other provision of that text, on previous case law or on relevant contract clauses and

[4] Voluntary contributions are consistent with the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the national correspondents. See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 371.

particular facts; the claim or relief sought by the claimant and any other factor describing the factual and procedural context within which the case was decided; the countries of the parties and the type of trade or other transactions involved. While it is often superfluous to report the exact dates of contracts, performance, submissions etc., if the notion of "time" is important for the application of the UNCITRAL text, such dates should be mentioned in the abstract (see also Annex III below).

IV. Possible copyright restrictions and confidentiality

26. As indicated above (see para. 19), all court decisions and arbitral awards stored by the Secretariat are made available to the public on the CLOUT database, subject to any copyright restrictions applicable to the decisions and awards. The national correspondents (or the voluntary contributors) should inform the Secretariat of any restrictions existing in their jurisdictions that would prevent the reproduction of the full texts of court decisions or arbitral awards. Where, exceptionally, the source or publisher of the original decision or award does not allow the distribution of copies of the original decision to the public, the Secretariat would not make available any copy of such texts. Possibly, the abstract or the CLOUT database would indicate the restriction and refer the user to the source of publication of the case.

27. It should be noted that arbitral awards will be made available to the public subject to any requirements of confidentiality applicable to them. The national correspondents should inform the Secretariat of the existence of confidentiality agreements concerning the awards that would prevent the reproduction of their texts.

28. Copyright protection is provided for the abstracts, the indices (discontinued)[5] and the digests of case law from the United Nation Publications Board in accordance with the United Nations regulations governing copyright in United Nations publications. Every publication of such materials bears a copyright notice.

29. As stated in the copyright notice, Governments and governmental institutions may reproduce or translate the copyrighted material without permission, but are requested to inform the United Nations of such reproduction or translation. All requests by others for permission to reproduce or translate copyrighted publications or parts thereof should be referred to the Secretary of the United Nations Publications Board, United Nations Headquarters, New York, N.Y. 10017. Before deciding on such requests, the Publications Board normally consults with the UNCITRAL Secretariat. The national correspondents and the UNCITRAL Secretariat, when advising the Publications Board, are guided by the objectives of the information system to provide worldwide awareness of the application of UNCITRAL legal texts and are thus favourably disposed to requests for reproducing or translating abstracts or indices.

V. Internet address

30. All published abstracts, copies of the original decisions, indices, digests of case law and other information in connection with CLOUT are available in the six official languages of the United Nations on the UNCITRAL website: http://www.uncitral.org/uncitral/en/case_law.html.

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[5] With a view to enhancing the usefulness of the system, the Secretariat published separate indices for the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNCITRAL Model Law on International Commercial Arbitration, under the identifying symbol: A/CN.9/SER.C/INDEX/.../. The purpose of such indices was to assist users of CLOUT in identifying cases relevant to a given issue by listing cases under the provision or sub-issue with which they dealt. After the online CLOUT database was developed, the publication of the indices has been discontinued. The indices already published can be found, in all six United Nations languages, at http://www.uncitral.org/uncitral/en/case_law/thesauri.html.

Annex I

Abbreviations of UNCITRAL legal texts reported in CLOUT

CISG	United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (Short title: United Nations Sales Convention)
ECC	United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)
HR	United Nations Convention on the Carriage of Goods by Sea (the "Hamburg Rules", 1978)
Limitation Convention (or Lim. Conv.) (amended text) or (unamended) text)	Convention on the Limitation Period in the International Sale of Goods (1974) and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (1980)
MAL	UNCITRAL Model Law on International Commercial Arbitration (1985) (Short title: UNCITRAL Model Arbitration Law)
MLCBI	UNCITRAL Model Law on Cross-Border Insolvency (1997)
MLEC	UNCITRAL Model Law on Electronic Commerce (1996)
MLES	UNCITRAL Model Law on Electronic Signatures (2001)
MLICT	UNCITRAL Model Law on International Credit Transfers (1992)
NYC	United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")
UNLOC	United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)

Annex II

Most common terminology in the CLOUT system

Abstract	Short summary of the court decision or arbitral award applying an UNCITRAL text(s).
Appellant	The party that lodges an appeal with a higher court.
Claimant	The party that files a claim in court (see also plaintiff).
(CLOUT) Issue	The compilation of abstracts periodically published by the UNCITRAL secretariat.
Defendant	The party against which the action in court is brought.
Digest	Compilation of case law on an UNCITRAL text which reflects trends in the interpretation of such text.
Complete court decision or arbitral award	The text of the court decision or arbitral award in its original language. Also referred to as "full text".
National correspondents	Experts designated by those States that are parties to a Convention or have enacted legislation based on a Model Law in order to collect court decisions or arbitral awards issued in the State and prepare abstracts of those most relevant.
Original abstract	The abstract received from the national correspondent or the voluntary contributor (before editing by the Secretariat).
Plaintiff	The party that brings an action in court (see also claimant).
Respondent (or Appellee)	The party against which an appeal is lodged.
Voluntary contributors	Contributors, not part of the network of national correspondents, occasionally providing abstracts to the CLOUT system.

Annex III

Checklist for drafting CLOUT abstracts

The following is recommended for consideration when drafting abstracts:

- Parties will be usually referred to as claimant and defendant, seller and buyer or similar applicable general terms. The author of the abstract will establish whether the use of an abbreviation of the parties' name in the text of the abstract is a more preferable option subject to the structure of the case.
- When pronouns are used to indicate a party, the gender-neutral "it" instead of "she/he" should be used.
- Exact dates of contracts, submissions, litigation etc. are often unnecessary. If time is important for the understanding of a case, the dates should be included in the abstract, otherwise a more general term might be preferable (e.g. two months later, later on etc.).
- Detailed location of courts, parties, transactions is generally unnecessary. Usually, a general reference suffices (e.g. a German court, a Spanish seller, etc.).
- References to the court name can be replaced, when possible, with "lower court", "appellate court", "court of appeals", etc.
- Reference to the UNCITRAL text should be made in the following way:
  - If the UNCITRAL text is quoted by the court (e.g. the United Nations Convention on Contracts for the International Sale of Goods), then the abstract will quote the UNCITRAL text.
  - If the court refers to the domestic enactment of the UNCITRAL text, the abstract should refer to the relevant article of domestic law and the corresponding article of the UNCITRAL text will be included in brackets (e.g. 11 U.S.C. § 1521 [corresponding to Art. 21 MLCBI]).
- If the court's reasoning relates to an article of an UNCITRAL text, but does not cite that article expressly, the article should be included in square brackets to indicate its relevance to the case.
- Reference to country names and abbreviations should possibly be in accordance with United Nations editorial rules; see http://unterm.un.org/.
  - For example, the USA should be referred to, when first mentioned, as "the United States of America" and afterwards as the United States.
- Legal terms should be used in the same way as in the UNCITRAL text to which the abstract refers and not according to the domestic legal context so that readers of other jurisdictions can clearly understand.
  - E.g. in the case of the UNCITRAL Model Law on Cross-Border Insolvency, "insolvency representative" should be used instead of "receiver" or "liquidator", "insolvency proceedings" instead of "winding-up" and so on.